

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

TRAVIS R. MCPEEK,

Plaintiff,

vs.

PAUL KLOCKER, JEFF TEBRINK,  
KAYLA WILLIS, BRITANNY HEDUM,  
C.O. DAWN, C.O. JOEL, SCOTT  
ALLEN,

Defendants.

No. C13-0086-LRR

ORDER

The matter before the court is the plaintiff's certificate of inmate account (docket no. 3) and motion to amend complaint (docket no. 4). The plaintiff filed such certificate and motion on October 21, 2013.

Pursuant to the court's order, the plaintiff submitted a certificate of inmate account. In light of the record, it is clear that the plaintiff does not have sufficient funds to pay the required filing fee. 28 U.S.C. § 1914(a) (requiring \$350.00 filing fee). Thus, in forma pauperis status shall be granted to the plaintiff. *See generally* 28 U.S.C. § 1915. The clerk's office shall file the complaint without the prepayment of the filing fee. Although the court deems it appropriate to grant the plaintiff in forma pauperis status, the plaintiff is required to pay the full \$350.00 filing fee by making payments on an installment basis. 28 U.S.C. § 1915(b)(1); *see also* *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997) ("[T]he [Prisoner Litigation Reform Act] makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal."). The full filing fee will be collected even if the court dismisses the case because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks money damages against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Here, the plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of his average monthly account balance or average monthly deposits for the six months preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). Based on his statements, the court finds that the plaintiff is unable to pay an initial partial filing fee. *Id.* Nevertheless, the plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court. Specifically,

[a]fter payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, although the plaintiff will not be required to submit an initial partial filing fee, the remaining installments shall be collected by the institution having custody of the plaintiff. *Id.* The clerk’s office shall send a copy of this order and the notice of collection of filing fee to the appropriate official at the place where the plaintiff is an inmate.

As to the motion to amend complaint, the plaintiff clarifies the efforts that he made to exhaust his administrative remedies and adds a claim based on the defendants’ failure to release him on an unsecured signature bond. Given the state court documents that the plaintiff included with his motion to amend complaint and the records in the state court cases, *see State v. McPeek*, OWCR014831 (Plymouth Cnty. Dist. Ct. 2013) and *State v. McPeek*, FECR015017 (Plymouth Cnty. Dist. Ct. 2013), the additional claim does not appear to be viable.<sup>1</sup> Nevertheless, the motion to amend complaint shall be granted.

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<sup>1</sup> Iowa state court criminal and civil records may be accessed at the following (continued...)

Read liberally, many of the facts that are alleged in the plaintiff's amended complaint are strikingly similar to those that are alleged in *McPeek v Blanchard*, Case No. 5:13-cv-04080 (N.D. Iowa 201\_\_). In light of the facts alleged by the plaintiff, including but not limited to the fact that he alleges he already sought relief in state court, and the law, the court is doubtful that the plaintiff states a claim upon which relief can be granted. Nevertheless, the court is unable to determine as a matter of law whether the plaintiff's amended complaint is frivolous or fails to state a claim within the meaning of 28 U.S.C. § 1915 or 28 U.S.C. § 1915A. Consequently, the court is of the opinion that the matter is best addressed after receipt of an answer and/or any dispositive motion deemed appropriate. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Money v. Moore*, 877 F.2d 9, 10 (8th Cir. 1989). The clerk's office shall serve the amended complaint on the defendants and mail a copy of the amended complaint to the Plymouth County Attorney without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Plymouth County Attorney shall notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants shall file an answer or other dispositive motion by no later than April 4, 2014.

**IT IS THEREFORE ORDERED:**

- (1) The plaintiff's application to proceed in forma pauperis status (docket no. 1) is granted.
- (2) The clerk's office is directed to file the complaint without the prepayment of the filing fee.

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<sup>1</sup>(...continued)

address: [http://www.iowacourts.gov/Online\\_Court\\_Services/](http://www.iowacourts.gov/Online_Court_Services/). *See Stutzka v. McCarville*, 420 F.3d 757, 760 n.2 (8th Cir. 2005) (addressing court's ability to take judicial notice of public records).

(3) The plaintiff need not submit an initial partial filing fee. Nevertheless, the institution having custody of the plaintiff is directed to collect and remit monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2). Until the \$350.00 filing fee is paid in full, the plaintiff is obligated to pay and the institution having custody of him is obligated to forward 20 percent of the preceding month's income credited to his account each time the amount in the account exceeds \$10.00.

(4) The clerk's office is directed to send a copy of this order and the notice of collection of filing fee to the appropriate official at the place where the plaintiff is an inmate.

(5) The plaintiff's motion to amend complaint (docket no. 4) is granted.

(6) The clerk's office is directed to serve the amended complaint (docket nos. 4 & 6) on the defendants and mail a copy of the amended complaint to the Plymouth County Attorney without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Plymouth County Attorney is directed to notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants are directed to file an answer or other dispositive motion by no later than April 4, 2014.

**DATED** this 25th day of February, 2014.



LINDA R. READE  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

**TO: WARDEN/ADMINISTRATOR**  
**Fort Dodge Correctional Facility, Fort Dodge, Iowa**

**NOTICE OF COLLECTION OF FILING FEE**

You are hereby given notice that Travis R. McPeek, #1147191, an inmate at your facility, filed the following lawsuit in the United States District Court for the Northern District of Iowa: *McPeek v. Klocker et al.*, Case No. C13-0086-LRR. The inmate was granted in forma pauperis status pursuant to 28 U.S.C. § 1915(b), which requires partial payments of the \$350.00 filing fee. Based on the inmate's account information, the court has not assessed an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Nonetheless,

the [inmate] shall be required to make monthly payments of 20 percent of the preceding month's income credited to [his] account. The agency having custody of the [inmate] shall forward payments from [his] account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, you must monitor the account and send payments to the clerk of court according to the system provided in 28 U.S.C. § 1915(b)(2), that is, you should begin making monthly payments of 20 percent of the preceding month's income credited to the inmate's account.

Please make the appropriate arrangements to have these fees deducted and sent to the court as instructed.

 Deputy Clerk

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Robert L. Phelps  
U.S. District Court Clerk  
Northern District of Iowa

**NOTICE OF LAWSUIT  
and REQUEST FOR  
WAIVER OF SERVICE OF SUMMONS**

**TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

TRAVIS R. MCPEEK,

Plaintiff,

No. C13-0086-LRR

vs.

PAUL KLOCKER, JEFF TEBRINK, KAYLA  
WILLIS, BRITANNY HEDUM, C.O. DAWN, C.O.  
JOEL, SCOTT ALLEN,

Defendants.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint and a copy of the corresponding order from this court are attached. This complaint has been filed in the United States District Court for the Northern District of Iowa.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, you have an obligation to cooperate in saving unnecessary costs of service of summons and complaint. Please sign the enclosed document where appropriate acknowledging receipt of the complaint and notice of this pending lawsuit and waiving formal service of summons. After signing the enclosed document, please return it to the United States Clerk's Office in the envelope provided within thirty (30) days of this date: February 25, 2014

I affirm that this notice and request for waiver of service of summons is being sent to you on behalf of the plaintiff, this February 25, 2014.

  
Deputy Clerk  
Signature (Clerk's Office Official)  
Northern District of Iowa

**ACKNOWLEDGMENT OF RECEIPT OF  
NOTICE OF LAWSUIT,  
and WAIVER OF SERVICE OF SUMMONS**

(\*\*Return **this** document within thirty days after February 25, 2014, to the United States Clerk's Office in the envelope provided.)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

TRAVIS R. MCPEEK,

Plaintiff,

vs.

PAUL KLOCKER, JEFF TEBRINK, KAYLA  
WILLIS, BRITANNY HEDUM, C.O. DAWN, C.O.  
JOEL, SCOTT ALLEN,

Defendants.

No. C13-0086-LRR

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I acknowledge receipt of the complaint and notice of the lawsuit in which I (or the entity on whose behalf I am addressed) have been named a defendant. I have received and/or read the complaint accompanying this document.

I agree to save the cost of service of a summons and an additional copy of the complaint by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4 of the Federal Rules of Civil Procedure. I hereby waive service of summons.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the service of summons. I understand that a judgment may be entered against me (or the entity on whose behalf I am acting) if an answer or motion under Rule 12 of the Federal Rules of Civil Procedure is not served within 60 days after February 25, 2014, (the date Notice, Waiver and corresponding documents were sent).

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Printed name \_\_\_\_\_  
As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Printed name \_\_\_\_\_  
As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Printed name \_\_\_\_\_  
As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Printed name \_\_\_\_\_  
As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Printed name \_\_\_\_\_  
As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Printed name \_\_\_\_\_  
As \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Entity)

**Address Form**

Case Number: C13-0086-LRR

Date: February 24, 2014

To: Clerk of Court  
RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: All Defendants  
Plymouth County Jail